TELECOMMUNICATIONS/Cable Regulation Reasonableness Standard

SUBJECT: **Telecommunications Competition and Deregulation Act of 1995 . . . S. 652. Pressler motion to table the Lieberman amendment No. 1298.**

ACTION: MOTION TO TABLE AGREED TO, 67-31

SYNOPSIS: As reported, S. 652, the Telecommunications Competition and Deregulation Act of 1995, will amend telecommunications laws and reduce regulations in order to promote competition in the telecommunications industry by eliminating barriers that prevent telephone companies, cable companies, and broadcasters from entering one another's markets. It will also permit electric utilities to enter the cable and telephone markets. Judicial control of telecommunications policy, including the "Modified Final Judgment" regime, will be terminated.

The Lieberman amendment would change the standard for determining if rates for cable services above regulated basic tier services and below unregulated premium services were "unreasonable," and thus subject to Federal Communications Commission (FCC) regulation. Rates would be considered unreasonable if they substantially exceeded the national average rate for comparable cable programming services in cable systems subject to effective competition. The amendment would also provide an exemption from these regulations for small cable systems. (Under the bill, upper tier cable services below premium services will only be considered unreasonable by the FCC if they substantially exceed the national average rate for comparable cable programming services. Further, as amended by the Dole amendment (see vote No. 248), the national average rate will not include rates of small cable companies, will be determined on a per-channel basis as of June 1, 1995, and will be recalculated every two years. The Dole amendment also exempted small cable companies from such regulation. Finally, "effective competition" is defined in the bill as having telephone company cable competition or another competitor with at least 15 percent marketshare.)

Debate was limited by unanimous consent. Following debate, Senator Pressler moved to table the amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

(See other side)

YEAS (67)			NAYS (31)			NOT VOTING (1)	
Republicans (50 or 96%)		Democrats (17 or 37%)	Republicans (2 or 4%)	Democrats (29 or 63%)		Republicans (1)	Democrats (0)
Abraham	Hutchison	Akaka	Helms	Biden	Kennedy	Hatch-2AY	
Ashcroft	Inhofe	Baucus	Simpson	Bingaman	Kohl		
Bennett	Jeffords	Breaux		Boxer	Lautenberg		
Bond	Kassebaum	Bryan		Bradley	Leahy		
Brown	Kempthorne	Daschle		Bumpers	Levin		
Burns	Kyl	Dorgan		Byrd	Lieberman		
Campbell	Lott	Ford		Conrad	Mikulski		
Chafee	Lugar	Harkin		Dodd	Moynihan		
Coats	McCain	Heflin		Exon	Murray		
Cochran	McConnell	Hollings		Feingold	Pell		
Cohen	Murkowski	Inouye		Feinstein	Pryor		
Coverdell	Nickles	Kerrey		Glenn	Rockefeller		
Craig	Packwood	Kerry		Graham	Sarbanes		
D'Amato	Pressler	Moseley-Braun		Johnston	Simon		
DeWine	Roth	Nunn			Wellstone		
Dole	Santorum	Reid					
Domenici	Shelby	Robb					
Faircloth	Smith						
Frist	Snowe						
Gorton	Specter						
Gramm	Stevens						
Grams	Thomas						
Grassley	Thompson						
Gregg	Thurmond						
Hatfield	Warner						

VOTING PRESENT(1)
Mack

EXPLANATION OF ABSENCE:
1—Official Buisiness
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

Cable television was closely regulated until 1984. In 1984, it was deregulated. Our colleagues tell us that prices skyrocketed. They do not tell us that prior to 1984 few people had even heard of cable television, nor do they tell us that it was mostly a service for remote communities that could not pick up regular television broadcasts, nor do they tell us that those broadcasts carried only two or three network signals and maybe one public broadcasting signal. Cable signals like CNN, ESPN, TNN, Discovery, Arts & Entertainment, did not exist. Now cable is available virtually everywhere in America. Literally hundreds of new cable stations offering an incredible variety of programming are available. The total cost for cable service is higher than when it was only offered with a few broadcast stations, but, on a per channel basis, the cost has been halved. All of this growth was caused by deregulation. For all practical purposes, the cable industry did not exist until it was deregulated in 1984.

In 1992, over President Bush's veto, Congress put some regulations back on the industry. Since then, capital investments have gone flat. The industry has stopped growing. Soon, if it remains under the thumb of the Government, it may start to collapse, because new, competing sources for entertainment and educational programming are being developed. Some of those new sources will be unleashed by this bill. However, this bill will also start easing the regulatory burden that was placed on the cable industry in 1992. The burden will be fully lifted when cable companies face effective competition from telephone companies, direct broadcast satellite companies, or other sources.

Frankly, we think the burden should be fully lifted now. Cable service is by no means a necessity--most people, in fact, choose not to buy it. Cable companies pass by more houses than they hook up to. Further, the channels we are talking about with the Lieberman amendment are not even the must-carry, basic tier channels, which arguably should be available to Americans to serve the public interest--instead, they are clearly luxury channels. We think the Federal Government is overstepping its proper bounds when it decides to regulate the costs of luxury items. We also think that it is pretty clear that this industry only grew when regulations were removed and that it stopped growing when they were reimposed. The Lieberman amendment would increase the regulation of cable rates. We oppose increasing that regulation, and thus urge the tabling of this amendment.

Those opposing the motion to table contended:

This bill will virtually guarantee a rise in cable prices and a decline in basic cable services. Right now, two cable companies control a large percentage of the market, and other companies within the industry are consolidating. This fact is significant when one looks at how this bill will allow the regulation of cable rates. Rates will only be regulated if they substantially exceed the national average on a per-channel basis. Thus, if a couple of big cable companies enact large price hikes, their new rates, rather than exceeding the national average, will instead set a new national average that other companies will then follow. Another problem with this system is that it will encourage companies to move services like Cable News Network (CNN) off their regulated, basic tiers to higher tiers. (Currently, though they are not required to do so, many companies will put a few services like CNN on their basic tiers in order to gain more customers.) This move will both allow them to charge for CNN, and to raise the number of channels being considered in the "per-channel" calculation of the reasonableness of their rates.

This formula would not present any problem if cable companies faced effective competition. The Government would have no reason to tell them not to gouge consumers if consumers could simply choose to buy from a different company if they tried. Unfortunately, in most markets cable companies do not face effective competition. Only 50 such markets currently exist in the United States. Direct Broadcast Satellite is still an infant industry, and telephone companies have yet to enter the market.

The solution offered by the Lieberman amendment is to base cable rates on the rates that are charged in markets where competition does exist. If our intent is to give consumers the benefit of a free market, then the solution is pretty simple: require the rates in monopoly markets to be the same as the rates in free markets. We should not, as this bill proposes, make cable rates in one monopoly market match the rates in other monopoly markets. The Lieberman amendment proposes a far fairer, far more sensible alternative to regulating cable rates during the transition to free cable markets. We therefore urge our colleagues to give it their support.